United Nations A/HRC/25/22

General Assembly

Distr.: General
17 January 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Report of the Secretary-General on measures taken to implement resolution 9/8 and obstacles to its implementation, including recommendations for further improving the effectiveness, harmonization and reform of the treaty body system*

Summary

In its resolution 9/8 on the effective implementation of international human rights instruments, the Human Rights Council requested the Secretary-General to report annually on measures taken to implement the resolution and on obstacles to its implementation, including recommendations for further improving the effectiveness, harmonization and reform of the treaty body system. The present report is submitted in response to this request and covers the period from 1 January to 1 December 2013. Chapter II of the report contains an overview of developments in the intergovernmental process during 2013, and announces anticipated next steps. Chapter III focuses on the twenty-fifth annual meeting of chairpersons of the human rights treaty bodies, for which the main topics on the agenda were treaty body strengthening and harmonization of working methods. Finally, chapter IV provides an update on other developments relevant to Human Rights Council resolution 9/8 in 2013, including the status of treaty ratifications or accessions; communications and field visits; information on treaty bodies' meetings with States parties; cooperation among committees and with other mechanisms; action taken by the committees to ensure follow-up by States to their concluding observations; treaty body engagement with civil society; support provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to treaty bodies and harmonization among the secretariats of the respective treaty bodies; technical assistance; and visibility and accessibility of treaty bodies, including the use of modern technologies.

* Late submission.

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I. Introduction

1. In its resolution 9/8 on the effective implementation of international human rights instruments, the Human Rights Council requested the Secretary-General to report annually on measures taken to implement the resolution and on obstacles to its implementation, including recommendations for further improving the effectiveness, harmonization and reform of the treaty body system. This report is submitted pursuant to this request and covers the period from 1 January to 1 December 2013.

2. Improving the effectiveness of the treaty body system is a multi-stakeholder endeavour, as States parties and treaty bodies each have specific competencies. On 14 September 2009, the United Nations High Commissioner for Human Rights, in her statement to the Human Rights Council, called on States parties to human rights treaties and other stakeholders to initiate a process of reflection on how to streamline and strengthen the treaty body system to achieve better coordination among these mechanisms. The High Commissioner made a similar appeal before the General Assembly on 21 October 2009. Since the treaty body strengthening process was launched in late 2009, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has encouraged and facilitated dialogue among various stakeholders with a view to generating proposals for strengthening the treaty bodies. In this context, consultations were held for academics (Lucerne, Switzerland, October 2011), treaty body members (Dublin, November 2011), United Nations entities (Geneva and New York, November 2011) and States parties (Geneva and New York, February and April 2012). In June 2012, the High Commissioner released a report (A/66/860) with concrete proposals to strengthen the treaty body system addressed to States parties, treaty bodies and United Nations entities. Areas in which OHCHR could strengthen its support for the treaty bodies were also identified.

3. The General Assembly, in its resolution 66/254, requested its President to launch an open-ended intergovernmental process aimed at strengthening the treaty body system. At the time of the drafting of this report, many elements contained in Human Rights Council resolution 9/8 were under discussion in the intergovernmental process on treaty body strengthening in New York. Chapter II of the present report provides an overview of developments in the intergovernmental process in 2013, and announces anticipated next steps. Chapter III focuses on the twenty-fifth annual meeting of chairpersons of the human rights treaty bodies, for which the main topics on the agenda were treaty body strengthening and harmonization of working methods. Finally, chapter IV provides an update on other developments relevant to Human Rights Council resolution 9/8 in 2013, including the status of treaty ratifications and accessions; communications and field visits; information on treaty bodies' meetings with States parties; cooperation between committees and with other mechanisms; action taken by the committees to ensure follow-up by States to their concluding observations; treaty body engagement with civil society; OHCHR support to the treaty bodies and harmonization among the secretariats of the treaty bodies; technical assistance; and visibility and accessibility of treaty bodies, including the use of modern technologies.

4. Many reports constitute useful background to the current report, including the Secretary-General's report on measures to further improve the effectiveness, harmonization and reform of the treaty body system (A/66/344), the previous report of the Secretary-General on implementing Human Rights Council resolution 9/8 (A/HRC/22/21), as well as the following reports of the chairpersons of the human rights treaty bodies: "Overview of the human rights treaty body system and working methods related to the review of States parties" (HRI/MC/2013/2), "Other activities of the human rights treaty bodies and participation of stakeholders in the human rights treaty body process" (HRI/MC/2013/3),

"Report on the implementation by the treaty bodies of the recommendations contained in the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies" (HRI/MC/2013/4), and the report of the twenty-fifth meeting of the Chairpersons of treaty bodies, entitled "Implementation of human rights instruments" (A/68/334).

II. Update on the intergovernmental process on treaty body strengthening

5. Further to resolution 66/254, in which the General Assembly requested that an open-ended intergovernmental process be launched with the aim of strengthening the treaty body system, in April 2012, the President of the General Assembly appointed Greta Gunnarsdottir, Permanent Representative of Iceland to the United Nations, and Desra Percaya, Permanent Representative of Indonesia to the United Nations, as co-facilitators of the intergovernmental process. In September 2012, the co-facilitators submitted their report on the deliberations and recommendations of the intergovernmental process (A/66/902), as requested in resolution 66/254. However, given the relatively short amount of time for Member States to deliberate and consider the numerous issues raised during the intergovernmental process, no specific recommendations for action were finalized.

6. The co-facilitators recommended that the intergovernmental process be extended to the sixty-seventh session of the General Assembly, which was endorsed in resolution 66/295. In December 2012, the President of the General Assembly re-appointed the above-mentioned co-facilitators. The co-facilitators held the following consultations during the sixty-seventh session of the General Assembly:

(a) Two informal meetings with Member States, on 12 February and 10 September 2013 respectively;

(b) Three thematic and informal discussions, on 19 and 20 February, from 11 to 17 April and on 6 and 7 May 2013 respectively, with treaty body experts participating as resource persons;

(c) Informal briefings and meetings with delegations, human rights treaty bodies and civil society, during a visit to Geneva on 18 and 19 April 2013;

(d) Numerous bilateral consultations with Member States;

(e) Two meetings with the chairpersons of the treaty bodies, during their annual meeting in New York, on 20 and 24 May 2013;

(f) A number of videoconference meetings with human rights treaty bodies;

(g) Two civil society forums, on 26 February and 22 May 2013, to provide an opportunity for civil society to contribute to the discussion on strengthening and enhancing the effective functioning of the human rights treaty body system;

(h) "Informal-informals" on 11, 19, 21, 26 and 27 June, and 16, 23 and 25 July 2013 to discuss the elements for a draft resolution as an outcome of the intergovernmental process.

7. The three informal consultations with Member States, in February, April and May 2013, focused on the subjects identified in the non-exhaustive list of issues. The co-facilitators prepared a number of discussion notes and OHCHR prepared two question-and-answer papers as well as substantive papers at the request of the co-facilitators.

8. Taking into account the distinct competencies as well as experience of different stakeholders in the furtherance of the intergovernmental process, the co-facilitators called

for the participation of stakeholders, in particular members of the human rights treaty bodies. They invited treaty body experts to act as resource persons during the consultations in February, April and May 2013. Although their participation could not be financially supported owing to the limited resources available, members from various committees were nonetheless able to participate in the consultations with delegations and provided valuable insights.

9. The consultations with Member States in February 2013 focused on a number of issues related to the functioning of the treaty bodies, such as the simplified reporting procedure, the submission of common core documents, coordinated requests for additional meeting time, reducing the number of pages and setting page limits for the annual reports of treaty bodies, summary records, webcasting and videoconferencing. Additionally, discussions were initiated on proposals for policies and processes with respect to the nomination and election of experts to the treaty bodies.

10. The consultations with Member States in April 2013 focused on a number of issues related to State party reporting, such as the interactive dialogue between States parties and treaty bodies, focused treaty body concluding observations, dual chambers, a treaty body jurisprudence database and a joint treaty body working group on communications. Finally, substantial time was dedicated to discussing the importance of improving the capacity of States to fulfil their reporting obligations to the human rights treaty bodies. With respect to the latter, OHCHR, at the request of the co-facilitators, organized a workshop on 16 April 2013 on developing the capacity of States to report to treaty bodies and follow up on concluding observations, with the participation of senior human rights officers who had provided this type of technical assistance in OHCHR field presences, the United Nations Children's Fund (UNICEF) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). The workshop further featured the perspective of State representatives as well as one Resident Coordinator.

11. In an effort to consult treaty body experts, the co-facilitators requested to meet with a number of committees during their sessions in Geneva. These interactions were facilitated through videoconferences between New York and Geneva.

12. Two civil society forums were organized in the context of the intergovernmental process, on 26 February and 22 May 2013 respectively. These forums were intended to provide a platform and give an opportunity to civil society to contribute to the discussion in the intergovernmental process. The forums utilized videoconferencing to garner more participants from venues in New York and Geneva. At these meetings, various views and concerns were conveyed by representatives of civil society organizations, on both procedural and substantive issues.

13. The co-facilitators also held informal briefings and meetings with delegations, human rights treaty bodies and civil society in Geneva, on 18 and 19 April 2013.

14. The consultations with Member States in May 2013 focused on the proposal for a comprehensive reporting calendar, guidelines for the independence and impartiality of treaty body members and the resourcing of the treaty body system.

15. Subsequently, the co-facilitators suggested that the chairpersons of the treaty bodies hold their annual meeting in New York in May (instead of in Geneva in June) to provide an opportunity for both the co-facilitators and Member States to discuss the ongoing process. The discussions between the chairpersons and the co-facilitators, Member States and civil society are reflected in chapter III of this report.

16. On the basis of their consultations with Member States, the co-facilitators submitted two draft papers: their final report proposing the way forward, which contains a short introduction to each of the issues addressed and a recommendation based on the views of

the co-facilitators; and draft elements for a draft resolution on the intergovernmental process to be adopted by the General Assembly, which makes recommendations to the treaty bodies, the United Nations and its Member States. Several "informal-informals" and bilateral discussions were convened in June and July 2013 to discuss the elements for the draft resolution. Both documents are annexed to the co-facilitators' report on the intergovernmental process (A/67/995) of 16 September 2013.

17. In their report, the co-facilitators indicated that more time was required to finalize the outcome. They noted that, in particular, fixed estimates of the budgetary implications of the elements suggested in the context of the intergovernmental process were required to provide a comprehensive overview of the impact of the suggestions made. The co-facilitators deemed that, once this information was provided, the intergovernmental process could be concluded through a final phase of concentrated negotiations among Member States.

18. The co-facilitators therefore recommended that:

(a) A report of the Secretary-General be requested on the practical and financial implications of measures proposed in the context of the intergovernmental process, to be submitted by 15 November 2013;

(b) The intergovernmental process be extended until February 2014;

(c) The final phase of negotiations be convened in early February 2014.

19. On 20 September 2013, the General Assembly, in resolution 68/2, extended the intergovernmental process until the first half of February 2014, with a view to finalizing the process, and agreed to continue the consideration of the elements for the substantive resolution. The General Assembly also requested the Secretary-General to provide, by 15 November 2013, a comprehensive and detailed cost assessment to provide background context to support the intergovernmental process.

20. On 6 November 2013, the President of the General Assembly appointed Greta Gunnarsdottir, Permanent Representative of Iceland to the United Nations, and Mohamed Khaled Khiari, Permanent Representative of Tunisia to the United Nations, as co-facilitators of the intergovernmental process.

21. On 15 November 2013, the United Nations High Commissioner for Human Rights, on behalf of the Secretary-General, submitted the background paper containing the cost assessment (A/68/606) to the President of the General Assembly. Chapter II of that paper gives an overview of the composition and functions of the treaty body system and sets out the current costs of the treaty bodies, as supported by the United Nations Office at Geneva, OHCHR and the United Nations Information Service at Geneva (UNIS). Chapters III and IV of the cost-assessment paper examine the potential cost implications of the proposals contained in the co-facilitators' draft resolution if they were to be adopted by Member States. These include, on the one hand, measures which would require additional resources, namely extra meeting time, more staff support, webcasting, videoconferencing and capacity-building programmes to increase States parties' compliance with their reporting obligations; and on the other hand, measures which would generate significant savings, such as the introduction of page limits for State party reports and the annual reports of the treaty bodies; reduction in the number of languages for issuing documentation and summary records and adjustments to the travel entitlement of treaty body members. The co-facilitators' draft resolution proposes that any savings be reinvested in the treaty bodies.

22. Negotiations are expected to resume in January 2014. OHCHR has provided support to the co-facilitators of the intergovernmental process and will continue to assist the process in any way required.

III. Twenty-fifth meeting of chairpersons of the human rights treaty bodies

23. At the suggestion of the co-facilitators, the annual meeting[1] of chairpersons of the human rights treaty bodies was held in New York from 20 to 24 May 2013, with a view to enhancing synergies with the intergovernmental process on treaty body strengthening. The chairpersons met with the co-facilitators, consulted with States and exchanged views with groups of Member States and civil society.

24. The chairpersons welcomed the opportunity to exchange views with the co-facilitators, with the common goal of strengthening human rights protection worldwide by strengthening the treaty bodies, and reviewed the co-facilitators' paper on the way forward and made comments.

25. The co-facilitators' proposal on webcasting and captioning was generally welcomed by the chairpersons as it would ensure the integration of evolving technologies and contribute to increasing participation, including by persons with disabilities. The chairpersons noted that webcasting could contribute to formalizing the ad hoc arrangements currently in place, and suggested that digital recording, for example, could reduce the need for summary records. The chairpersons also welcomed the proposal for videoconferencing and highlighted the precedent set by the Committee on the Rights of the Child.

26. The co-facilitators noted that the adoption of the simplified reporting procedure (issuance of a list of issues prior to reporting) could become an important cost-saving measure, and updating the common core documents by way of an addendum should be considered. The chairpersons welcomed the proposal to strictly limit the number of pages of the reports and noted that addressing the backlog and coordinated requests for additional meeting time might create competition among the committees. The co-facilitators, however, stressed the need to avoid future ad hoc requests for additional resources.

27. Regarding an aligned methodology for the constructive dialogue between States parties and treaty bodies, the chairpersons highlighted that a uniform allocation (two meetings) for the interactive dialogue with a State party might not be meaningful in all cases, given the specificities of the States parties, and called for a degree of flexibility in that regard. They also asked for flexibility on other proposals, such as the issue of task forces, and the various methods of work that had been developed by each committee on the basis of its experience, composition and precedents.

28. With respect to reprisals, the chairpersons stated that there was a need for a collective response that would include measures of reparation. They suggested that each committee designate a focal point and that the creation of a joint body to address reprisals be explored.

29. Regarding the advantages and disadvantages of dual chambers, the chairpersons noted that, while there were clear benefits in terms of saving time and money, dual chambers would be difficult for smaller committees — such as the Committee against Torture, which has only 10 members — for which it could be difficult, if not impossible, to find a balanced composition for each chamber. The question was also raised as to how treaty body members who did not participate in the interactive dialogue could properly participate in adopting concluding observations.

30. The chairpersons recalled that consideration of States parties in the absence of a report was already provided for in a number of treaties and carried out by committees,

[1] See A/68/334.

albeit sparingly, especially for States with long-overdue reports. The real issue was lack of compliance by States parties, although cooperation was often forthcoming when the States were informed that they would be reviewed regardless of the submission of a report.

31. On 21 May 2013, the chairpersons held an informal consultation with States. In his opening statement, the Chair of the annual meeting stated that the success of the treaty body strengthening process would be measured by its ability to offer more protection to rights holders than was currently the case. He gave an overview of the unprecedented challenges confronting the treaty body system, such as the considerable backlog in reviewing States parties' reports and communications, and the high degree of non-compliance by States parties with their reporting obligations, which constituted a threat to the integrity, coherence and effectiveness of the system, as did the significant delay between the submission of reports and their review. The Chair criticized the severe underresourcing of the system, which forced it to rely to an unsafe degree on extra-budgetary resources and conveyed the deep concern of the chairpersons over cases of reprisals, including against human rights defenders who provided information to the treaty bodies. He called for greater access for civil society organizations from all States parties to the treaty bodies.

32. The Chair enumerated the principles and benchmarks that the chairpersons considered to be fundamental for the success of the treaty body strengthening process. As the principles are rooted in human rights treaty law, as developed and ratified by States, the chairpersons expect them to be faithfully reflected in both the process and outcome of the treaty body strengthening process.

33. Regarding the principles, the Chair stated that any outcome of the intergovernmental process should strengthen the human rights protection that the treaty body system offered, and ensure the independence and impartiality of the treaty bodies and their members.

34. At their twenty-fourth annual meeting in 2012, the chairpersons had endorsed the guidelines on the independence and impartiality of treaty body members (Addis Ababa guidelines),[2] which interpreted the concepts of independence and impartiality for treaty body members. These guidelines are based on pre-existing guidelines of the Human Rights Committee, relevant rules of procedure and decisions of other treaty bodies relating to independence. The Addis Ababa guidelines have since been incorporated, in one way or another, in the rules of procedure and practices of most committees, as documented in the report on the implementation by the treaty bodies of the recommendations contained in the report of the High Commissioner (HRI/MC/2013/4). That had given the Addis Ababa guidelines considerable weight.

35. The Chair further stated that any outcome of the intergovernmental process should be comprehensive and sustainable, and the treaty bodies should be equipped with the proper material and human resources from the regular budget to adequately carry out their responsibilities under the respective treaties.

36. The fourth principle raised was efficiency, which would be tested in the light of the goal of the treaty body system to respect, protect and promote human rights. In this context, all cost-saving measures should be fully reinvested in the system which has suffered dramatically from a lack of resources. As such, valuable capacity-building initiatives should not be undertaken at the expense of the already scarce resources of the treaty bodies, but rather additional resources should be made available for that purpose.

37. The intergovernmental process provided Member States and treaty bodies with a unique opportunity to bring the work of the treaty bodies up to date by allowing them to

[2] A/67/222, annex, and Corr.1.

take full advantage of technological developments, while at the same time making it universally accessible for persons with disabilities.

38. The Chair further highlighted that the strengthening process was, by definition, a multi-stakeholder process in which both States and treaty bodies had specific competencies. The chairpersons very much valued the dialogue in each committee as well as the informal consultation that was a permanent feature of the annual meeting of the chairpersons.

39. The Chair recalled that the treaties provide for the treaty bodies' rules of procedure and working methods to be determined by the treaty bodies themselves, and highlighted that the treaty bodies were committed to the continued harmonization of their working methods. He welcomed the report of the United Nations High Commissioner for Human Rights on treaty body strengthening.[3] In conclusion, he stated that the treaty bodies had already invested greatly in developing possible solutions for a crisis that, if not attended to, could seriously weaken a system already under stress.

40. In the ensuing dialogue with Member States, the chairpersons emphasized the need to give the Addis Ababa guidelines — which they considered a valuable tool — time to be implemented and used before resolving to review them. They suggested the possibility of creating a joint treaty body working group to look into the issue of reprisals. On the reliability of sources, they mentioned their practice of cross-referencing various sources, including information from other human rights mechanisms and United Nations entities. The diversity of sources allowed them to better evaluate information received. The chairpersons underlined the importance of maintaining diversity with regard to languages and expressed the opinion that, in general, States' lack of compliance with reporting obligations was not only a matter of capacity, but also of political will, noting, however, that in the absence of additional resources and structural solutions, the current system could not cope with increased State compliance with their reporting obligations. While acknowledging the advantages of a comprehensive request for additional resources, the chairpersons cautioned about possible competition, and even conflict, among treaty bodies regarding the distribution of such resources and concluded that objective parameters would have to be drawn up.

41. On 22 May 2013, the chairpersons held informal consultations with civil society organizations and the International Coordinating Committee of national human rights institutions. A joint statement by 14 civil society organizations highlighted a number of priority areas for consideration by the chairpersons. All considered that the intergovernmental process provided a key opportunity for reminding States of their obligation to fully and effectively implement the recommendations and decisions adopted by the treaty bodies, to ratify all human rights treaties and their optional protocols, and to remove reservations that limited the scope of the treaties. Civil society organizations welcomed the alignment of the treaty bodies' working methods, and, given the increase in reprisals against civil society organizations and human rights defenders, they called upon the treaty bodies to develop common guidelines to address reprisals and to appoint focal points with a broad and clear mandate to take all possible steps to prevent and swiftly address reprisals. They also stressed the importance of the private meetings between treaty bodies and civil society organizations related to State reviews.

42. In the ensuing dialogue, civil society representatives underscored the value of the international human rights treaty system as the only forum in which individuals and groups could claim their human rights, while the treaty monitoring system offered a measure of State accountability for human rights implementation that, in some cases, was the only

[3] A/66/860.

accountability available. They considered it essential that the treaty bodies should continue to review States parties in the absence of a report, and some further expressed the view that capacity-building assistance should only be made available to States parties that committed to promptly complying with their reporting obligations.

43. The chairpersons welcomed the valuable contribution of civil society organizations to the work of the treaty bodies, whether through submissions, inputs, hearings or briefings. They called on civil society to continue to actively participate in State party reviews as well as in the implementation of recommendations emanating from the treaty bodies.

44. As part of the programme of work of the meeting, the chairpersons considered the follow-up to the recommendations of their twenty-fourth meeting, held in Addis Ababa in 2012, and reviewed developments, including the implementation by treaty bodies of recommendations included in the report of the High Commissioner for Human Rights on strengthening the treaty body system. They also discussed the post-2015 development agenda and adopted a joint statement.[4]

45. The chairpersons noted that the harmonization of their working methods has always been an ongoing process, and would continue in the future. Each chairperson reported on developments within her or his respective committee, both in relation to the harmonization of working methods and to progress in implementing the recommendations contained in the High Commissioner's report. New developments included, but were not limited to, the use of modern technologies, including webcasting and close captioning (Committee on the Rights of Persons with Disabilities); adopting a simplified reporting procedure (Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families); reducing the length of concluding observations (Committee on the Rights of the Child, Committee against Torture); reporting calendars adapted to individual committees (Committee on the Rights of Persons with Disabilities, Committee on Enforced Disappearance); reorganization of working methods due to the entry into force of new protocols (Committee on Economic, Social and Cultural Rights) and requests for additional meeting time to meet growing demand.

46. On the issue of resources, the chairpersons pointed out that committees were already taking measures to reduce costs, such as issuing summary records in English only (Committee on the Elimination of Discrimination against Women) or the adoption of paperless procedures (Committee on the Rights of Persons with Disabilities).

47. The chairpersons also discussed how their respective committees conducted the interactive dialogue and the time devoted to each State party and to individual communications. The discussion revealed different practices in terms of the length of time for the consideration of a report, rapporteurs versus country task forces, or the clustering of provisions in the treaty.

48. The chairpersons expressed the need for a shared, broad, common proposal that provided for a predictable, clear and transparent State party reporting system, and agreed that the periodicity of a reporting calendar should not exceed five years. They further reiterated that any structured reporting and review calendar should meet the following criteria:

(a) Eliminate unequal treatment of States parties by operating on the basis of universal compliance with reporting obligations;

(b) Be regular and predictable, leading to efficient utilization of resources, and facilitate advance planning for all parties concerned;

[4] A/68/334, annex.

(c) Follow as closely as possible the periodicity provided for in the treaties so as not to prejudice the legal reporting obligations of States parties;

(d) Non-reporting should be an exception and not the norm, and the calendar should not be permissive as regards non-reporting;

(e) Eliminate backlogs and ad hoc requests for meeting time to the General Assembly.

49. The chairpersons expressed their commitment to continue to align the working methods of the treaty bodies and decided to discuss the possibility of a common format for concluding observations and the possible alignment of the methodology for the interactive dialogue at their twenty-sixth meeting to be held in June 2014. They reiterated the recommendation made at their twenty-fourth meeting to adopt measures on working methods and procedural matters that were common across the treaty body system and that had previously been discussed within each committee. They agreed that such measures should be implemented by all the treaty bodies, unless a committee subsequently dissociated itself therefrom. They also reaffirmed their role in facilitating representation and coordination of common activities, such as consideration and adoption of joint statements, while respecting the autonomy and specificity of each treaty body.

50. The chairpersons affirmed their commitment to promote positive consideration of the recommendations contained in the report of the High Commissioner on strengthening the treaty body system, stressing that implementation should be collaborative and recommending that each treaty body annually update the meeting of chairpersons on progress made. They further recommended that the secretariat produce and regularly update an implementation report to enable the meeting of chairpersons to better review progress, bearing in mind that treaty body strengthening is an ongoing process. To that effect, the chairpersons decided to include treaty body strengthening and consideration of the recommendations contained in the report of the High Commissioner on the agenda of the next meeting.

51. The chairpersons also expressed deep concern over late and non-reporting by a number of States parties, and recommended that the secretariat post regular updates on late and non-reporting by States parties on the OHCHR website. They decided to include this topic as a standing item on the agenda of the meeting of chairpersons.

52. Finally, the chairpersons decided that their next meeting would focus on treaty body strengthening; late and non-reporting of States parties; and harmonization of working methods.

IV. Other developments relevant to Human Rights Council resolution 9/8

53. In 2013, a total of 43 new ratifications and accessions (compared to 70 in 2012) were deposited with the Secretary-General, bringing the total to 2,192 ratifications of and accessions to international human rights treaties and protocols, as well as acceptance of treaty provisions relating to individual communication procedures.

54. Also, 75 weeks of treaty body sessions were held in 2013, during which 135 States parties were reviewed. Treaty bodies with a State party reporting procedure received a total of 96 State party reports, including 12 common core documents. The Committee on Economic, Social and Cultural Rights made headway with the reporting backlog with an additional week of meeting time. However, as at 1 December 2013, over 300 State party reports were pending consideration. Engagement of civil society and other stakeholders is well established and the treaty bodies receive more than 1,000 written submissions from

civil society, national human rights institutions (NHRIs) and United Nations entities each year; over 1,000 observers attended treaty body public meetings in 2013.

55. Treaty bodies with a complaint procedure examined 116 communications in 2013. The Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, and the Human Rights Committee issued 53 requests for interim measures of protection for alleged victims at risk of irreparable harm. The treaty bodies also followed up on over 100 decisions in which violations of international human rights treaties had been found. Between 1 January and 11 December 2013, the treaty bodies received and registered 130 new individual complaints. As at 1 December 2013, a total of 530 individual communications were pending review. The Human Rights Committee held a retreat in April 2013 to reflect on key challenges related to communications. The Committee on the Rights of Persons with Disabilities adopted a methodology for follow-up to its views, while the Committee on Enforced Disappearance issued nine requests for urgent action under article 30 of the Convention, registered its first communication and appointed a Special Rapporteur on New Communications and Interim Measures. The Committee on Economic, Social and Cultural Rights registered its first communication under the Optional Protocol to the Covenant and established a Working Group to address new communications and requests for interim measures.

56. OHCHR continued its advocacy for the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in Burkina Faso, Guatemala, Kazakhstan, Mali, Mexico, Moldova, Paraguay, Peru, Senegal, Togo and the former Yugoslav Republic of Macedonia. These efforts contributed to the entry into force of this instrument which allowed the Committee to receive and consider complaints from individuals and States and to undertake inquiries as from May 2013 — a historical step reaffirming the justiciability of economic, social and cultural rights and providing increased protection to individuals. The individual complaint procedures of the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families are yet to enter into force.

57. The Subcommittee on Prevention of Torture carried out six missions in 2013, including three regular visits to New Zealand, Peru and Gabon, two advisory visits to Germany and Armenia, and one follow-up visit to Cambodia.

58. Several treaty bodies adopted general comments or general recommendations in 2013. These are authoritative statements that provide States parties with detailed and expert clarification of treaty provisions with a view to enhancing their understanding of treaty provisions and assisting them in implementing their treaty obligations.

59. The Committee on the Rights of the Child adopted four general comments on: the right of the child to have his or her best interests taken as a primary consideration (No. 14); the right of the child to the enjoyment of the highest attainable standard of health (No. 15); State obligations regarding the impact of the business sector on children's rights (No. 16); and the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (No. 17).

60. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted a general comment on the rights of migrant workers in an irregular situation and members of their families (No. 2). The Committee on the Elimination of Discrimination against Women adopted general recommendations on the economic consequences of marriage, family relations and their dissolution (No. 29) and on women in conflict prevention, conflict and post-conflict situations (No. 30), the latter coinciding with a Security Council debate on women, peace and security on 18 October

2013 which lead to the adoption of Council resolution 2122 (2013), aimed at strengthening women's political participation in peace processes.

61. The Committee on the Elimination of Racial Discrimination adopted general recommendation No. 35 on combating racist hate speech, which provides guidance on how to condemn such speech and combat prejudices leading to racial discrimination while also respecting other rights, including freedom of expression.

62. A number of treaty bodies held thematic debates with a view to deepening understanding of the application of their instruments in certain areas and, in some cases, with a view to gathering information for the preparation of a general comment or recommendation.

63. In 2013, the Committee on the Elimination of Discrimination against Women held general discussions on rural women (art. 14 of the Convention) and on access to justice (arts. 2 and 15 of the Convention); the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families held a discussion on the role of migration statistics for treaty reporting and migration policies; while the Committee on the Rights of Persons with Disabilities facilitated a discussion on women and girls with disabilities.

64. Several treaty bodies also issued statements on specific issues or in the context of specific situations. As mentioned in paragraph 44 above, the chairpersons of the human rights treaty bodies adopted a joint statement on the post-2015 development agenda and human rights. The Committee on the Elimination of Discrimination against Women issued statements on the role of women in the process of political transition in Egypt, Libya and Tunisia and on strengthened cooperation with UN Women. The Committee against Torture issued a statement on reprisals, while the Committee on Enforced Disappearances issued a statement on the *ratione temporis* element in the review of reports submitted by States parties under the Convention.[5] The Committee on the Rights of the Child issued statements on the importance of practical help in relation to girls' education and on the killing of Syrian children in alleged chemical attacks, and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families released a statement on the occasion of the 10th anniversary of the entry into force of the Convention.

65. In the reporting period, treaty bodies continued to develop, improve and implement new working methods and to harmonize and standardize their work. At the time of drafting this report, 8 out of 10 committees had amended their rules of procedure and/or annexed the Addis Ababa guidelines thereto. Some committees issued statements on the High Commissioner's report on strengthening the treaty body system (Committee on the Elimination of Discrimination against Women, Subcommittee on Prevention of Torture, Committee against Torture). The Human Rights Committee held joint meetings with the Committee on the Elimination of Discrimination against Women and the Committee against Torture.

66. Most committees also held meetings with States parties to discuss the most recent developments in the work of the treaty bodies. On 22 April 2013, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families met with representatives of 24 States, during which it, inter alia, provided an overview of its activities, collaboration with stakeholders and working methods, including its simplified reporting procedure and fixed reporting calendar. The Human Rights Committee held an informal meeting with States parties on 22 July 2013 and the secretariat of the Human Rights Committee further provided 18 technical briefings to States parties prior to the

[5] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fSUS%2f7250&Lang=en.

review of their report, and held 12 follow-up meetings with States on their concluding observations.

67. At its 54th session, the Committee on the Elimination of Discrimination Against Women adopted a revised follow-up methodology (A/68/38, annex III).

68. In addition to supporting the individual committees and the annual meeting of the chairpersons of the human rights treaty bodies, OHCHR continuously promotes the harmonization of the work of the treaty bodies and the secretariats supporting them. In 2013, OHCHR continued its online survey to solicit feedback from treaty body members on the support received from the Office in relation to all treaty body activities. As of the third quarter of 2013, the Office was using a similar online survey to gather feedback from human rights officers supporting the treaty bodies with a view to generating statistical data to be used to assess and enhance synergies in OHCHR to support the work of the mechanisms. OHCHR also organized weekly internal meetings with the secretaries of all the treaty bodies in order to stimulate sharing of good practices, coordinate activities, and optimize the support provided to the treaty bodies.

69. Treaty body-relevant expertise is further shared across the divisions of OHCHR to ensure the integration of a treaty body perspective across the organization, including in the context of country visits by the High Commissioner, with the aim of enhancing follow-up to the concluding observations of the treaty bodies. The participation of field presences in the treaty bodies' State party review processes has been further strengthened through the submission of written inputs and active participation via videoconference or physical representation during the meetings whenever possible, taking into account financial constraints.

70. OHCHR continued to make the Universal Human Rights Index (UHRI) available as a comprehensive, up-to-date tool for searching treaty body output; it compiles recommendations from treaty bodies, special procedures and the universal periodic review (UPR) and is continuously updated. The UHRI can be accessed through the OHCHR website (www.ohchr.org).

71. Moreover, OHCHR enhanced the functionality of the treaty body database and gradually integrated it into the OHCHR website with the goal of allowing for better information sharing with, and participation of, all stakeholders. OHCHR also continued to develop online systems to facilitate the management of civil society participation in the sessions of some committees.

72. OHCHR further continued to ensure that the outputs of the treaty bodies were duly reflected in the documentation for the UPR, more specifically in the compilations prepared by OHCHR.

73. In 2013, OHCHR disseminated 50 weekly updates and three quarterly newsletters of the Human Rights Treaties Division to civil society and other stakeholders. The quarterly newsletters are shared with Member States, United Nations partners, NHRIs and civil society organizations, and the weekly updates keep online subscribers around the world abreast of the work of the treaty bodies. A weekly broadcast is also circulated to all 172 treaty body experts and provides more detailed information on the treaty body sessions, the work of the Human Rights Treaties Division and issues of relevance to the work of the treaty bodies, so that each committee is aware of the work of the other nine committees.

74. Through Facebook and Twitter, as well other social media platforms, OHCHR has sought to increase the visibility of the treaty bodies, creating greater awareness of their findings, and increasing the number of stakeholders. On Facebook, a short summary of the discussion of each State party's report is posted with a link to the relevant page on the

OHCHR website where the full concluding observations can be downloaded. The same is also done for thematic discussions or the examination of individual complaints.

75. In 2013, increased awareness, understanding and visibility of the regular work of treaty bodies among Member States, United Nations partners, NHRIs and civil society organizations was also promoted through more than 50 briefings by OHCHR on the treaty body system for a wide range of actors, including State Party representatives, regional organizations and mechanisms, civil society organizations, lawyers, academics and students. OHCHR also provided media training for treaty body members.

76. OHCHR conducted capacity-building activities to assist States parties in complying with their obligations under the human rights treaties. These activities included training, at the request of States parties, on preparing the common core document, the treaty specific guidelines, preparing the report, individual communications and follow-up to recommendations. In September 2013, a training workshop on reporting and follow-up was held for the members of the Inter-ministerial Committee for Human Rights, in Rabat. In November 2013, a training workshop on ratification and reporting under the International Convention for the Protection of All Persons from Enforced Disappearance was held for francophone African countries, in Tunis. Also in November 2013, OHCHR provided training to members of the Government of the State of Palestine on the implications of treaty ratification, in particular reporting obligations under the international human rights treaties, including the reporting cycle, drafting of the common core document, content and format of periodic reports, and the preparation for the interactive dialogue with the committees. In December 2013, at the request of the United Nations Joint Human Rights Office in the Democratic Republic of Congo, training on reporting under the International Covenant on Civil and Political Rights, the International Convention on the Elimination of Racial Discrimination and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was carried out.

77. In 2013, OHCHR also commenced work on a study on existing practices regarding standing national reporting and coordination mechanisms. This study is intended to respond to requests from States for information and will build on the country practices collected. Once published, the study may serve as a tool to assist Member States wishing to create or reinforce such mechanisms.

78. During the reporting period, OHCHR continued its cooperation with the Registry of the European Court of Human Rights regarding individual cases. The implementation of treaty bodies' decisions and judgements of the European Court of Human Rights was included in the discussions of the seventh annual meeting on the cooperation between OHCHR and the Council of Europe. A joint declaration by the Council of Europe and the Office of the United Nations High Commissioner for Human Rights was signed in September 2013; it aims to strengthen cooperation between the two organizations in promoting and protecting human rights, including in the area of communications and recommendations in concluding observations.

79. OHCHR and Microsoft signed a memorandum of understanding to assess and report on the potential for videoconferencing the treaty bodies sessions, primarily the sessions of the Committee on the Rights of Persons with Disabilities, with the objective of assessing the accessibility of committee meetings and improving accessibility processes and practices at Palais Wilson and Palais des Nations. The accessibility team was made up of representatives from Microsoft, OHCHR, the United Nations Office at Geneva, Middlesex University and AbilityNet. The team delivered a report on short-, medium-, and long-term measures to expand accessibility. OHCHR initiated the implementation of one of the recommendations, namely, a pilot training workshop on access to documentation and websites, in June 2013, which was attended by OHCHR staff from both headquarters and field presences.

80. In December 2013, staff in the Human Rights Treaties Division of OHCHR, which supports the treaty bodies, received training on the OHCHR Gender Equality Policy and Gender Equality Strategic Plan. OHCHR systematically strives to integrate a gender perspective in secretariat inputs into the work of the treaty bodies to ensure that it is reflected in their outputs, such as lists of issues, concluding observations, views and decisions, as well as field visits by the Subcommittee on Prevention of Torture. In implementation of the Gender Equality Strategic Plan, staff of the Human Rights Treaties Division were also requested to incorporate a gender goal or action in their respective workplans.

IV. Conclusion

81. **The growth of the treaty body system, combined with the increase in States parties to the international human rights instruments has not been met with an equivalent allocation of resources or meeting time necessary to ensure the effective fulfilment of the treaty bodies' mandates. The chronic deficiency of resources has led to a significant backlog of reports awaiting consideration by the treaty bodies and an excessive waiting time for authors of individual complaints, largely undermining the protective function of the complaints procedures.**

82. **Reviews of staffing and financial needs have only taken place in an ad hoc manner, usually when a decision to request additional meeting time is adopted or when a treaty passes a milestone for expansion. Such requests have not always, or only partially, been approved by the General Assembly. There has been no comprehensive review of the workload and resourcing of the treaty bodies. A coherent, sustainable and periodically reassessed financing system for treaty bodies must be established and operationalized.**

83. **The Secretary-General continues to follow the intergovernmental process on treaty body strengthening with great interest and expectation, and looks forward to a comprehensive and sustainable outcome of the process by mid-February 2014.**

United Nations A/HRC/25/23

General Assembly

Distr.: General
24 February 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promoting reconciliation and accountability in Sri Lanka

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

In the present report, the Office of the United Nations High Commissioner for Human Rights acknowledges the progress made in reconstruction and the implementation of some of the recommendations made by the Lessons Learnt and Reconciliation Commission. The Government of Sri Lanka has, however, failed to ensure independent and credible investigations into past violations of international human rights and humanitarian law. The report also contains updates on the ongoing attacks on religious minorities, and the harassment and intimidation of human rights defenders, lawyers and journalists.

The Government has not responded to the offers of technical assistance made by the High Commissioner and the special procedures. Meanwhile, new evidence continues to emerge on the events that took place in the final stages of the armed conflict. Against this background, the High Commissioner recommends the establishment of an independent, international inquiry mechanism, which would contribute to establishing the truth where domestic inquiry mechanisms have failed.

* Late submission.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 22/1, in which the Council encouraged the Government of Sri Lanka to implement the constructive recommendations of the Lessons Learnt and Reconciliation Commission,[1] as well as those made by the United Nations High Commissioner for Human Rights in her report,[2] and to conduct an independent and credible investigation into allegations of violations of international human rights and humanitarian law.[3]

2. In resolution 22/1, the Human Rights Council also encouraged the Government of Sri Lanka to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans, and to cooperate with the special procedures. It also encouraged the Office of the High Commissioner (OHCHR) and relevant special procedures mandate holders to provide advice and technical assistance on implementing the above-mentioned steps. Lastly, the Council requested OHCHR to present a comprehensive report on the implementation of the resolution at its twenty-fifth session, with input from relevant special procedures.

II. Engagement of the Office of the High Commissioner and the special procedures

3. At the invitation of the Government, the High Commissioner visited Sri Lanka from 25 to 31 August 2013. In accordance with the request made by the Human Rights Council in resolution 21/1, she presented an oral update on the situation to the Council at its twenty-fourth session (A/HRC/24/CRP.3/Rev.1), in which she suggested concrete steps that the Government could take that could help the Council to assess progress made in the areas identified by the Council in resolution 22/1 by the time of its twenty-fifth session. These included inviting the Working Group on Enforced or Involuntary Disappearances and the Independent Expert on minority issues; demonstrating a credible national investigation process with tangible results, including the successful prosecution of individual perpetrators; and setting a clear timeline for disengagement of the military from activities that are meant to be civilian. Regrettably, none of these steps had been taken by the end of the period of review.

4. The Government of Sri Lanka did not respond positively to the offer of technical assistance made by the High Commissioner following an OHCHR technical mission to Sri Lanka in November 2012. On 31 October 2013, following her visit to Sri Lanka, the High Commissioner again addressed a letter to the Minister for External Affairs and other officials in which she reiterated the readiness of her Office to provide technical assistance. The areas of possible assistance highlighted by the High Commissioner were in line with

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[1] The Commission was appointed in May 2010 by the President of Sri Lanka to investigate the facts and circumstances that led to the failure of the 2002 ceasefire agreement, the lessons to be learned from those events, and to suggest institutional, administrative and legislative measures to prevent any recurrence of such events, and to promote national unity and reconciliation among all communities. The report of the Commission is available from www.llrcaction.gov.lk/reports/en/Final_LLRC_Report_en.pdf.

[2] A/HRC/22/38.

[3] For the comments of the Government of Sri Lanka on the draft version of the present report, see A/HRC/25/G/5.

some of the recommendations accepted by the Government during its universal periodic review and with those made by the Secretary-General's Panel of Experts on Accountability in Sri Lanka.[4] The High Commissioner regrets that she has received no response.

5. With regard to the issue of disappearances, the High Commissioner urged the Government to invite the Working Group on Enforced or Involuntary Disappearances, to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and to finalize measures to criminalize disappearances in national law.

6. With regard to criminal justice and accountability, the High Commissioner offered technical assistance in various areas, including draft legislation on hate speech and witness and victim protection, to ensure compliance with relevant international standards. In relation to some long outstanding criminal investigations, the High Commissioner offered to identify international experts who could assist the national inquiries.

7. Furthermore, the High Commissioner offered to provide technical advice on how truth-seeking mechanisms and reparations policies could be developed in accordance with international standards.

8. On 17 December 2013, the Assistant Secretary-General for Human Rights met with the Secretary of Defence of Sri Lanka, in New York, and reiterated the High Commissioner's offer of technical cooperation. Subsequently, on 20 January 2014, the High Commissioner met with the Secretary to the President, Lalith Weerathunga, in Geneva.

9. There are currently nine outstanding requests to visit Sri Lanka by special procedures: on minority issues; freedom of peaceful assembly and of association; freedom of opinion and expression; extrajudicial, summary or arbitrary executions; enforced or involuntary disappearances; human rights defenders; independence of judges and lawyers; discrimination against women in law and practice; and truth, justice, reparation and guarantees of non-recurrence. In October 2013, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the rights to freedom of peaceful assembly and of association followed up on their requests to visit or made specific offers of technical assistance. These requests remain pending. Since January 2012, the Government has transmitted responses on 842 cases to the Working Group dating back to the 1990s.

10. At the invitation of the Government, the Special Rapporteur on the rights of internally displaced persons visited Sri Lanka from 2 to 6 December 2013 (see also para. 14 below). In August 2013, the Special Rapporteur on the right to education received an invitation from the Government, but had to defer his visit owing to conflicting engagements. The Government has since extended an invitation to the Special Rapporteur on the human rights of migrants to visit the country in May 2014.

11. The High Commissioner welcomes the Government's engagement in these important issues, but reiterates her calls to invite the special procedures on enforced or involuntary disappearances and minority issues as a matter of priority, considering that these issues featured prominently in the recommendations made by the Lessons Learnt and Reconciliation Commission and have also been identified by the Human Rights Council as key concerns.

[4] See www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

III. Recent human rights developments

12. In her oral update to the Human Rights Council at its twenty-fourth session, the High Commissioner acknowledged the achievements made by the Government, with the help of the international community, in demining, resettlement, reconstruction and rehabilitation since 2009. She welcomed the elections to the Northern Provincial Council in September 2013, and recommended that the Government should work with new provincial authorities to promote meaningful community participation in reconstruction and development programmes. She however also highlighted pressing concerns, including the lack of progress in accountability for serious human rights violations; the situation of detainees and former combatants, with regard to extrajudicial, summary and arbitrary killings; continued militarization[5] and compulsory land acquisition[6] (particularly in the north and east of the country); shrinking space for civil society and the media; rising religious intolerance; and the undermining of independent institutions, including the judiciary.

13. Following his visit in December 2013, the Special Rapporteur on the human rights of internally displaced persons also acknowledged the reconstruction effort, but emphasized the need to promote durable solutions and to address the protection of women and girls, access to land, and the withdrawal of the military from all civilian functions.[7]

14. In its comments on a draft version of the present report, the Government of Sri Lanka stated that, since 2009, the total strength of the military had been reduced by approximately 30 per cent in the Northern Province, and by 26 per cent in the Eastern Province, and the vast majority of checkpoints had been removed. It added that a total of 20,011 acres of private land and 5,740 acres of State land had been released in the two provinces. The High Commissioner noted, however, reports that more than 6,000 acres of private land had been acquired by the State in Jaffna around the Palaly cantonement, and that more than 2,000 petitioners had taken legal action to reclaim their land.[8] The Government stated that steps were being taken to compensate the owners.

15. The High Commissioner remains concerned that non-governmental organizations are still required to register and report through a secretariat under the Ministry of Defence. She also draws attention to concerns that women are vulnerable to sexual harassment and violence when there is a heavy military presence.[9] For instance, in May 2013, a soldier attached to an army camp in Nedunkerny reportedly confessed to raping a 6-year-old child. In its comments on the present report, the Government reported that the military had taken strict action in such cases.

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[5] See Office of the United Nations High Commissioner for Refugees (UNHCR), A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating ("Tool Three"), June 2013 (available from http://unhcr.lk/wp-content/uploads/2014/01/Tool-Three-Final-Report-July-12-2013.pdf)figures 1.5, 1.6. & 1.7.

[6] See case studies on Jaffna, Sampur and Weli Oya in Centre for Policy Alternatives, Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, November 2013, available from www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/.

[7] See the press release of the Special Rapporteur on the human rights of internally displaced persons after his visit to Sri Lanka from 2 to 6 December 2013, atwww.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14086&LangID=E.

[8] See Centre for Policy Alternatives, Politics, Policies and Practices with Land Acquisitions and Related Issues (see footnote 6), p. 45.

[9] See UNHCR, A Protection Assessment of Sri Lankan Internally Displaced Persons (see footnote 5), figures 1.14, 1.15, 1.16 and 1.17.

A. Former combatants and detainees

16. During the visit of the High Commissioner, the Government informed her that more than 11,758 former combatants had been rehabilitated and reintegrated into society, 234 detainees were undergoing rehabilitation, and 91 detainees were facing legal proceedings. The Government also reported that the files of 977 detainees who had been held for long periods of time without charge had been opened, and that 160 files were pending a decision by the end of January 2014.[10]

17. The High Commissioner welcomes such progress and urges the Government to expedite decision-making on pending cases by bringing charges, releasing or sending individuals for rehabilitation, and to ensure that lawyers have access to their clients.

18. The High Commissioner again urges the Government to repeal the Prevention of Terrorism Act and the regulations promulgated under it, which allow for arbitrary detention.

19. The High Commissioner notes with appreciation the Government's report that all former child combatants had been reintegrated by May 2010 and been provided with formal education.[11] At the same time, she reminds the Government that, as highlighted in Lessons Learnt and Reconciliation Commission recommendation 9.79, there has yet to be any prosecutions or trials for the war crime of child recruitment, including against former cadres of the Liberation Tigers of Tamil Eelam (LTTE) and former paramilitary leaders now serving in the Government.

B. Attacks on religious minorities, human rights defenders and freedom of opinion and expression

20. The High Commissioner remains deeply disturbed by the significant surge in attacks against religious minorities and the incitement of violence by Sinhala Buddhist nationalist groups, led predominantly by certain extremist Buddhist monks. She received reports from the Secretariat for Muslims, a non-governmental organization, according to which there were some 280 incidents of threats and violence against Muslims in 2013,[12] as well as attacks on mosques and places of business. Christian groups also reported more than 103 incidents of attacks on churches and Christians in 2013. After a lull prior to the Commonwealth Heads of Government Meeting, five violent attacks led by Buddhist monks were reported against multiple churches in December 2013 and January 2014. In its comments on the present report, the Government cited 182 incidents affecting all religions, of which only 147 were reported to police. Although the Government stated that, the police had taken necessary action, in many cases perpetrators were readily identifiable in video footage, where police are seen standing as onlookers to the violence. The Government also reported that amending legislation to enhance existing provisions of the Penal Code and ICCPR Act with regard to hate speech had been prepared.

21. OHCHR continues to receive complaints of widespread harassment and intimidation targeting human rights defenders, activists, lawyers and journalists, including reprisals against those who engage with the United Nations human rights mechanisms and OHCHR. The High Commissioner expressed grave concern at the harassment and intimidation

[10] See the National Plan of Action for the Implementation of LLRC Recommendations (available from www.llrcaction.gov.lk/npoa.html), IR (1a), p. 7.

[11] Ibid., p. 11.

[12] Statistics provided by the Secretariat for Muslims.

against individuals or groups who met or attempted to meet with her, even months after her visit. OHCHR received reports of at least 10 serious cases involving targeting individuals and groups between the end of October and November 2013 in the run-up to and during the Commonwealth Heads of Government Meeting hosted by Sri Lanka. These included the case of a prominent human rights defender who, on 4 November, was the target of threats and derogatory remarks during a radio broadcast hosted by the State-owned Sri Lankan Broadcasting Corporation. In another instance, on 13 November, the police blocked buses carrying members of families of the disappeared as they were travelling to Colombo to participate in a human rights event and in a demonstration calling for accountability for enforced disappearances.

22. Attacks against journalist and media outlets continued in 2013. Several incidents targeted the Tamil newspaper *Uthayan*: on 10 January, two distributers were attacked and copies of newspapers burned; on 13 April, armed men attacked employees and set fire to printing machines in the Jaffna office; and, on 11 July, armed men attacked the newsroom. On 24 August, an associate editor of the *Sunday Leader* was attacked by masked men at her home, and her computer was stolen in a subsequent break-in, on 8 September.

C. Extrajudicial, summary and arbitrary killings

23. The High Commissioner and several special procedures mandate holders continued to follow developments in recent cases in which the apparent excessive use of force led to the death of unarmed protesters or of prison inmates. On 1 August 2013, approximately 6,000 residents of Weliweriya, a small suburb of Colombo, protested against the State's failure to address community concerns about the contamination of their drinking water supply by a local factory. Army personnel were deployed in support of the police to control the protest, which had turned violent and reportedly used excessive force, leaving three people dead and many others with critical injuries.[13] On 2 August 2013, the Army Commander appointed a military court of inquiry into the incident. The court submitted its report on 21 August, but it has not been made public. On 30 August 2013, the Army announced that four senior officers had been relieved of their duties with immediate effect, although no court martial has been initiated.[14] The factory has since been relocated and compensation offered to the families of those killed.

24. On 12 November 2012, the Ministry of Rehabilitation and Prison Reforms appointed a committee to inquire into events in Welikada prison on 9 November 2012, when Special Task Force personnel conducted a search operation and army personnel subsequently intervened to control a riot; at least 27 inmates were killed and 43 injured.[15] The committee handed over its report to the Ministry of Rehabilitation and Prison Reforms on 15 January 2014, but it has not been published. According to media reports, it concludes that the prisoners shot each other. The Government informed the High Commissioner that a similar inquiry had been carried out into custodial deaths when security forces had stormed

[13] See Human Rights Watch. "Sri Lanka: Investigate 'Clean Water' Protest Deaths", 9 August 2013, available from www.hrw.org/news/2013/08/09/sri-lanka-investigate-clean-water-protest-deaths; and Ministry of Defence and Urban Development, press communiqué, 30 August 2013, available from www.defence.lk/new.asp?fname=Press_Communique_Weliweriya_Incident_20130830_03.

[14] See Ministry of Defence press communiqué (see footnote 13).

[15] Centre for Policy Alternatives, "A List of Commissions of Inquiry and Committees Appointed by the Government of Sri Lanka (2006-2012)", 12 March 2012, available from www.cpalanka.org/a-list-of-commissions-of-inquiry-and-committees-appointed-by-the-government-of-sri-lanka-2006-2012/.

Vavuniya prison to free officials taken hostage by prisoners in June 2012, which was highlighted in her previous report,[16] but to date no report has been made public.

D. Mass graves

25. On 26 November 2012, a mass grave with approximately 155 skeletal remains was uncovered in Matale, central Sri Lanka. In June 2013, a presidential commission of inquiry was appointed to probe the circumstances surrounding the gravesite, despite the initiation of a judicial process in the Matale Magistrate's Court. There are concerns regarding the manner in which the remains are being preserved, the protection of the site and the investigation process.[17] In December 2013, it was reported that another gravesite with 52 skeletal remains, including of children, was discovered in Mannar, northern Sri Lanka.

26. It is vital that the integrity of the sites, and exhumation and identification procedures, be given due attention. The rights of families to know the fate of their missing loved ones is critical, and they must be actively involved in the legal and humanitarian efforts to locate, exhume, rebury and memorialize the dead. In this context, an uncompromised exhumation and investigation process is essential, and could benefit from international assistance.

IV. Implementation of the recommendations of the Lessons Learnt and Reconciliation Commission

27. In May 2012, the Cabinet appointed a presidential task force to monitor the implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission. In July 2012, the task force issued a national plan of action for the implementation of some of the recommendations. The Government released its latest update on the implementation of the plan of action in January 2014.[18] The High Commissioner had the opportunity to discuss progress with the Secretary to the President on 20 January 2014.

28. The High Commissioner welcomes the progress reported in implementing a number of recommendations made by the Lessons Learnt and Reconciliation Commission, for instance giving effect to the trilingual policy, promoting the official use of the Tamil language, the upgrading of schools in the northern and eastern provinces, and measures to promote ethnic diversity in schools and equity of access to higher education.

29. Noting the breadth and depth of the full range of recommendations made by the Lessons Learnt and Reconciliation Commission, the High Commissioner has questioned the process and rationale for the Government's selectivity in implementing only some of the recommendations. In some instances, as discussed below, she also observed that certain recommendations had been watered down in the national plan of action or during various stages of implementation.

30. The Lessons Learnt and Reconciliation Commission made approximately 285 recommendations. In the national plan of action, the Government pledged to support the implementation of 92 recommendations. In August 2013, it announced that it would

[16] A/HRC/22/38, para. 21.

[17] For instance, the Matale magistrate overseeing the inquiry was subsequently transferred – according to the Government, on disciplinary grounds – to Colombo.

[18] Available from www.llrcaction.gov.lk/npoa.html.

implement an additional 53 recommendations,[19] bringing the total to 145 recommendations. At the universal periodic review of Sri Lanka in November 2012, the Government stated that some of the remaining Commission recommendations fell under the ambit and scope of the national plan of action for the protection and promotion of human rights (2011-2016), progress reports on which are not available in the public domain.

31. In many instances, however, the specified activity in the national plan of action does not fully correspond to or address the recommendations made by the Lessons Learnt and Reconciliation Commission, or the activity has been only partially completed. For instance, while recommendation 9.73 calls for the investigation of allegations against illegal armed groups, the corresponding activity is the disarming of armed groups.[20]

32. In other examples, recommendation 9.46 called upon the Government to direct law enforcement authorities to take immediate steps to ensure that allegations of abductions, enforced disappearances and arbitrary detention are properly investigated and perpetrators brought to justice. The corresponding activity identified by the Government does not respond to the call for investigations, but focuses on the capacity-building of police and community policing.[21] Recommendation 9.270 called for the establishment of interfaith mechanisms to facilitate early warning and prevention of communal or religious violence, but this is being implemented by civil defence committees established by the Ministry of Defence during the war.[22]

33. Little progress has been made with other key recommendations relating to justice and accountability issues, a core concern for the Human Rights Council; for instance, recommendation 9.120 urged the Government to implement the recommendations of the report of the presidential commission of inquiry (the Udalagama Commission) appointed in 2006 to investigate alleged serious violations of human rights committed since August 2005,[23] particularly the killing of five students in Trincomalee, in January 2006, and of 17 aid workers of Action contre la Faim, in August 2006. Limited progress has been reported under the national plan of action on these two cases (see paras. 47 – 64 below); furthermore, the plan does not address any of the other 13 high-profile cases investigated by the Udalagama Commission, including the murder of a former Minister for Foreign Affairs and of other parliamentarians, and the disappearance of a Catholic priest.

34. Recommendation 9.213 called upon the Government to investigate the serious allegations against illegal armed groups (some of which had operated as paramilitaries), and to prosecute and punish perpetrators irrespective of their political links. In the national plan of action, the Government reported that, as at January 2014, 76 suspects were being detained by the Terrorist Investigation Division, and that an investigation concerning some of them was ongoing.[24]

35. While the paramilitary groups have largely been disbanded, no action has been taken to date in relation to two senior paramilitary leaders now serving in ministerial positions, Douglas Devananda and Vinayagamoorthy Muralitharan (alias Karuna), or the former

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[19] See the press release of the Presidential Secretariat of Sri Lanka, 15 July 2013, at www.presidentsoffice.gov.lk/index.php?option=com_k2&view=item&id=120:cabinet-approves-action-on-53-more-llrc-recommendations.

[20] Other examples include recommendations 9.57 and 9.81.

[21] There are similar issues with recommendations 9.73, 9.285 and 9.213.

[22] The Government announced the reactivation of civil defence committees in August 2011; see www.defence.lk/new.asp?fname=20110824_01.

[23] See Centre for Policy Alternatives, "A List of Commissions of Inquiry and Committees" (see footnote 15).

[24] See National Plan of Action (see footnote 10), p. 30.

Chief Minister of the Eastern Province, Sivanesat'hurai Chandrakanthan (alias Pillaiyan), all of whom are linked to numerous allegations of serious crimes during the armed conflict.[25] Both Karuna and Pillaiyan were former LTTE commanders who subsequently formed the breakaway Karuna faction named in the Lessons Learnt and Reconciliation Commission as well as successive reports of the Secretary-General on children and armed conflict as being responsible for child recruitment, a war crime.[26]

V. Progress in accountability issues

A. Domestic initiatives

36. In its resolution 22/1, the Human Rights Council called upon the Government to conduct an independent and credible investigation into allegations of violations of international human rights and humanitarian law and to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans. A number of the recommendations made by the Lessons Learnt and Reconciliation Commission also called for further investigation into specific cases and issues, in particular allegations of the indiscriminate killing of civilians and the summary execution of prisoners. To date, the Government has taken limited and piecemeal steps towards investigating serious allegations of violations of international human rights and humanitarian law, and none of these have had the independence or credibility required.

37. The Lessons Learnt and Reconciliation Commission recommended further investigations into, inter alia, the circumstances under which specific instances of death or injury to civilians could have occurred, and, that, if such investigations disclosed wrongful conduct, that perpetrators be prosecuted and punished, as well as into the Channel 4 video recordings to establish the truth of the allegations arising from them. The Commander of the Army convened a military court of inquiry in February 2012 to investigate and submit a report on the observations made by the Commission. Little, however, is known about the proceedings, as the court has been closed to the public and it has not issued any report.

38. In its update of the national plan of action of January 2014, the Government reported that the court of inquiry of the Sri Lanka Army completed in February 2013 its investigation into the allegation of killings of civilians, and concluded that instances of shelling referred to in the report of the Lessons Learnt and Reconciliation Commission had not been caused by the Army, and that civilian causalities might have been due to unlawful acts by the LTTE. The Government reported that the second part of the investigation into allegations made in the Channel 4 video was under way.

39. The High Commissioner has observed that military courts of inquiry do not have the necessary impartiality and independence to inspire confidence. The Commander of the Army who established the courts was also the commander of the security forces in the main battle zone of the conflict, and was actively engaged in the overall military planning and

[25] See Human Rights Watch, "Sri Lanka: Probe into LTTE Crimes Should Start with Karuna", 28 March 2013 (www.hrw.org/news/2013/03/28/sri-lanka-probe-ltte-crimes-should-start-karuna), and Amnesty International, Sri Lanka report, available from www.amnesty.org/en/region/sri-lanka/report-2010.

[26] S/AC.51/2007/9. See also Human Rights Watch, "Sri Lanka: Karuna Group Abducts Children for Combat", 25 January 2007, available from www.hrw.org/news/2007/01/23/sri-lanka-karuna-group-abducts-children-combat.

operations there. In cases of alleged human rights violations by the military or armed forces, investigations should be carried out by civilian authorities, not by the armed forces themselves.[27]

40. According to the Government, the Census on Human and Property Damages due to Conflict, completed in December 2013, will shed light on the number of civilian deaths and injuries during the war, as well as on the fate of missing persons. The results are reportedly being analysed. The outcome of the census will not, however, provide a total picture of all those who have died or disappeared since 1982; for instance, data were collected only from the immediate family members of those dead or missing, thereby missing those cases where all family members had died, disappeared or left the country.

41. Other issues for which the Lessons Learnt and Reconciliation Commission recommended further investigation remain unaddressed by the courts of inquiry or any other process. For instance, in paragraph 9.114 of its report, the Commission expressed deep concern at the persistent reports concerning the killing of journalists and other forms of attacks on journalists and media institutions, and the fact that these incidents still had to be conclusively investigated and perpetrators brought to justice.

42. The High Commissioner is also concerned that legal proceedings have not begun against any LTTE suspect for alleged war crimes or other human rights abuses.

43. In August 2013, the Government announced the appointment, by the President, of the new Commission of Inquiry on Disappearances. The Commission, which conducted its first public sittings from 18 to 21 January 2014, in Kilinochchi District, received approximately 13,700 complaints from all parts of the country.[28] The Government has also sought information from other countries concerning Sri Lankans who may now be abroad. The High Commissioner welcomes this effort, but notes that the Commission will only cover disappearances in the northern and eastern provinces between 1990 and 2009. Many disappearances reported in Colombo and other parts of the country in recent years will therefore not fall within its scope.

44. In November 2013, the Government announced that the Human Rights Commission of Sri Lanka would conduct a national inquiry into allegations of torture committed between 2009 and 2013, with the support of the Human Rights Division of the Commonwealth Secretariat. In early December 2013, the Commission announced that the inquiry had been postponed indefinitely.[29]

45. In her previous report,[30] the High Commissioner recommended that Sri Lanka should establish a more comprehensive truth-seeking mechanism, which would build upon the recommendations of the Lessons Learnt and Reconciliation Commission. It is important to stress that any truth-seeking mechanism must fully comply with the State's international legal obligations, and must be fully independent, including the selection of its members and

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[27] See for example CCPR/C/79/Add.76, CCPR/CO/71/VEN, CCPR/CO/69/KGZ, CCPR/C/79/Add.104, CCPR/C/79/Add.86, para. 9, CCPR/C/79/Add.96, CCPR/C/79/Add.80, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40* (A/35/40), para. 249, and CAT/C/CR/31/1, para. 9 (d) (iii).

[28] Ministry of Defence and Urban Development, "Commission probing disappearances receives 13,700 complaints", 27 January 2014, available from www.defence.lk/new.asp?fname=Commission_probing_disappearances_receives_13700_complaints_20140127_07.

[29] Ramanathan Ahilan, "HRC Postpones Set Up Of Torture Commission On Alleged Requests By CSOs – Rights Now Asks Chairman To Name The Orgs", Rights Now, 14 December 2013, available from www.rightsnow.net/?p=4347.

[30] A/HRC/22/38.

budgetary considerations. It should enjoy the broadest possible mandate covering the entire period of the conflict and the whole territory. It should be based on a broad national consultation process, which should include the views of victims and survivors and of civil society organizations from all parts of the country. Lessons must be learned from the failure of past commissions of inquiry to ensure that any new mechanism enjoys the independence and powers necessary to be effective. For instance, any comprehensive truth mechanism should be established on a specific legislation meant for the mechanism, not under the currently flawed Commission of Inquiries Act.

46. The High Commissioner notes that it would not be permissible for any truth mechanism to grant amnesties that prevent the prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations. A truth commission should consider seeking international support, for example special technical, legal and policy assistance, as well as the involvement of international investigators to assist the process. Lastly, any such truth commissions should be complemented by comprehensive and coherent transitional justice mechanisms and processes that include prosecution, reparations, vetting and other accountability or reform programmes.

B. Emblematic cases

47. The failure of the Government to make any significant progress towards accountability is illustrated by the lack of independent and credible investigations into allegations of serious human rights violations in several emblematic cases. These cases have been repeatedly been drawn to the attention of the Human Rights Council by the High Commissioner and international human rights mechanisms. The Secretary-General's Panel of Experts highlighted in its report many of these cases (paras. 149, 170 and 414), which were investigated by previous national commissions of inquiry and for which the Lessons Learnt and Reconciliation Commission also recommended further investigations. In some cases, the Government has repeatedly reported to the Council that progress had been made in investigations. None of these cases has, however, resulted in the perpetrators being brought to justice. These cases are only a small but representative sample of the grave allegations of serious human rights violations committed by the Government and the LTTE during the conflict that have yet to be investigated or remain unresolved.

1. The Trincomalee five

48. On 2 January 2006, five students were allegedly beaten and executed by Sri Lankan security forces at the Trincomalee sea-front. The Trincomalee Magistrate's Court concluded in its inquest that the deaths had been due to gunshot injuries, and directed the police to conduct further investigations and to bring the suspects to court. A number of special task force members at the scene were detained as suspects soon after the incident, but released the same year. Since then, the magistrate in Trincomalee has postponed the case on a monthly basis, requesting the Criminal Investigation Division to produce reports of its investigations. The Division has failed to do so and has not provided justifiable reasons for the delay. Several witnesses and their family members fled the country after receiving threats.[31]

49. In 2006 and 2007, the Trincomalee case was investigated by the Udalagama Commission, which was observed by an international independent group of eminent

[31] See University Teachers for Human Rights (Jaffna), special report No. 30, 1 April 2008. Available from www.uthr.org/SpecialReports/Spreport30.htm.

persons. The Government has never published the Commission's report. The case was also investigated by the Human Rights Commission of Sri Lanka at the time; its report, which concluded that security forces had been involved, first appeared in the public domain in January 2014.[32] The Lessons Learnt and Reconciliation Commission had expressed dismay at the lack of follow-up to the findings of the Udalagama Commission, and recommended that the Government investigate the killings further.

50. In 2013, the Government informed the Human Rights Council that the Attorney-General had instructed the police to commence a non-summary inquiry before judicial authorities. At the time, the Government noted that the matter "may be brought to a conclusion and is concrete evidence of our commitment to accountability".[33]

51. In June 2013, 12 Special Task Force officers were arrested and remanded in connection with the murders. The Senior Superintendent of Police, who was in command at the time, was not among them (he has since been promoted to Deputy Inspector General and returned to Trincomalee). The Attorney-General informed the High Commissioner in August 2013 that the anticipated time frame for proceedings of this kind was three months, but pointed out the difficulties in convincing witnesses to come forward. The officers were released on bail in October 2013. On 20 January 2014, during a meeting with the Secretary to the President, the Attorney-General's Office informed the High Commissioner that evidence had been recorded from 14 witnesses, and affidavits examined from another seven. The Attorney-General's Office has summonsed a further 14 witnesses, although had had difficulties contacting those outside the country. After eight years of investigations, commissions of inquiry and repeated commitments by the Government, it is of great concern that this case has not been brought to a conclusion.

2. Action contre la Faim

52. On 4 August 2006, 17 aid workers from Action contre la Faim were executed at their office premises in Muttur, when the Government and LTTE were fighting for control of the town.[34]

53. An inquest into the killings began in the Muttur Magistrate's Court on 15 August 2006. In subsequent months, however, the case was transferred to Anuradhapura then to Kantale, and then back to Anuradhapura. In November 2007, the magistrate of Anuradhapura was transferred to another location and the case was sent back to the magistrate in Muttur (a different magistrate to the one who initially heard the case in August 2006), where it has since ground to a halt. Action contre la Faim lodged a complaint with the Human Rights Commission of Sri Lanka, later complaining of its total ineffectiveness and lack of cooperation.[35]

54. Credible and independent local and international organizations have conducted substantial inquiries into the case and made serious allegations about its mishandling by the

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[32] Available from www.colombotelegraph.com/wp-content/uploads/2014/01/report-by-the-HRC-appointed-Special-Rapporteur.pdf.

[33] Statement by the leader of the Sri Lanka delegation, Mahinda Samarasinghe, at the high-level segment of the twenty-second session of the Human Rights Council, available from https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/22ndSession/OralStatements/Sri%20Lanka%20mtg%206.pdf.

[34] In its ruling addressed to the Sri Lankan Secretariat for Coordinating the Peace Process on 29 August 2006, the Sri Lanka Monitoring Mission concluded that the Army was in control of the town at the time of the death of the aid workers.

[35] Action contre la Faim, *The Muttur massacre: a struggle for justice*, study report, June 2008, available from www.actionagainsthunger.org/sites/default/files/publications/ACF-IN-Sri-Lanka-Advocacy-Report-6-18-08.pdf.

Attorney-General's Department, the police, the Judicial Medical Officer and the Ministry of Justice. They noted that officials had destroyed, removed and otherwise tampered with evidence. The families of the victims had been intimidated, threatened and, in some cases, encouraged to sign statements of withdrawal.[36]

55. The case was also among those investigated by the Udalagama Commission in 2007/08, although its report has never been published. The Lessons Learnt and Reconciliation Commission recommended that the Government should complete the investigation and prosecute those responsible. During the High Commissioner's visit to Sri Lanka, the Attorney-General informed her that he had instructed his staff to re-examine archived files, while pointing out that the investigation was proceeding slowly. In its comments on the present report, the Government stated that a team of senior prosecutors continued to pursue various lines of inquiry, although it has not been possible to establish the identity of those responsible.

3. Executions of prisoners and those who surrendered

56. Since the end of the armed conflict in 2009, video and photographic material have emerged depicting scenes from the last phase of the war, in which prisoners appear to have been killed upon their surrender or while in the custody of the security forces.

57. In June 2011, the Special Rapporteur on extrajudicial, summary or arbitrary executions presented a technical report to the Human Rights Council that demonstrated the authenticity of portions of the video footage first broadcast by Channel 4 in August 2009.[37] On 10 September 2009, the Government had announced the outcome of its own technical analysis on the basis of which it disputed the previous findings of the Special Rapporteur. In response, the Special Rapporteur commissioned independent experts to undertake a technical analysis, which confirmed his initial conclusion. While the Lessons Learnt and Reconciliation Commission did not reach a firm conclusion on the authenticity of the material, it recommended that the Government should conduct further investigations. According to the Government, this is now the subject of a second stage of proceedings by the military court of inquiry, yet to be concluded.[38]

(a) Balachandran Prabhakaran

58. In February 2013, a series of photographs emerged depicting Balachandran Prabhakaran, the 12-year-old son of LTTE leader Villupillai Prabhakaran, sitting in a bunker, alive and apparently in the custody of Sri Lankan troops, then his apparently dead body lying on the ground, his chest pierced by bullets. The photographs were taken in May 2009, a few hours apart and with the same camera. The authorities have maintained that the boy was killed in cross-fire.

(b) T. Thurairajasingham (alias Colonel Ramesh)

59. Video and photographic material obtained by Channel 4 and other sources depict LTTE commander Colonel Ramesh being interrogated by Sri Lankan security forces, followed by still images of his mutilated dead body. According to several witness testimonies to the events surrounding the face of Colonel Ramesh, he was in the custody of the security forces at the time of his death.

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[36] See University Teachers for Human Rights, special report No. 33, 4 August 2009, available from http://uthr.org/SpecialReports/spreport33.htm#_Toc237059512.

[37] A/HRC/17/28/Add.1, appendix.

[38] See National Plan of Action (see footnote 10), p. 2.

(c) Shoba (alias Isaipriya)

60. The analysis by the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Channel 4 photographic and video material of the death of a high-profile member of the LTTE press and communications wing, Isaipriya, revealed the likelihood of summary execution by the army. The video and pictures showed that her clothing had been pulled away to reveal her bare body.[39] In November 2013, Channel 4 released new footage that shows her being captured alive by the army.

61. With regard to each of the above three cases, the Government stated the authenticity of the footage and photographs remained unsubstantiated and unverified. Whether this has been the subject of any further investigation is unknown.

(d) "White flag" incident

62. The Secretary-General's Panel of Experts examined allegations of extrajudicial executions of high-level LTTE leaders on 18 May 2009, despite assurances from the Government that they could safely surrender. High-ranking government and military officials have provided conflicting accounts of the events in rallies and international forums.[40] While the circumstances surrounding the incident remain uncertain, the Panel concluded that the LTTE leadership intended to surrender. Evidence of this incident continues to emerge through non-governmental sources from witnesses now located outside the country. In its report, the Lessons Learnt and Reconciliation Commission failed to critically analyse or investigate the "white flag" incident, but it cited testimonies from an army general and a government agent, who dismissed these allegations. In its comments on the present report, the Government stated that no further inquiries were being conducted into the incident owing to lack of credible evidence.

4. Prageeth Ekneligoda

63. On 24 January 2010, a Sri Lankan journalist and cartoonist, Prageeth Ekneligoda, disappeared shortly after leaving work. A few days earlier, he had published an article critical of President Rajapaksa. Local residents told the Sri Lankan press that they had seen a white van without numbered plates close to his house around the time of his disappearance. In August 2009, Prageeth had already been abducted, then released the following day, with his abductors saying that they had made a mistake. This case is emblematic of the tens of thousands of cases of disappearance witnessed over the past 30 years in Sri Lanka and remain unresolved. The Ekneligoda case has been raised by the High Commissioner, the Working Group on Enforced or Involuntary Disappearances, the Committee against Torture and the Secretary-General's Panel of Experts. While the Lessons Learnt and Reconciliation Commission did not investigate this case, it made general recommendations that the Government investigate abductions, enforced disappearances and attacks on journalists.

64. In June 2011, former Attorney-General (now Chief Justice) Mohan Peiris was ordered to appear at a habeas corpus hearing in the case after telling the Committee against Torture, in 2011, that Ekneligoda was living in a foreign country. At the hearing, Mohan Peiris admitted that he did not know Prageeth Ekneligoda's whereabouts and said that his

[39] See Amnesty International, Sri Lanka: Briefing to Committee against Torture, October 2011 (available from www.amnesty.org/en/library/asset/ASA37/016/2011/si/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf), p. 20.

[40] See Frederica Jansz, "'Gota ordered them to be shot'- General Sarath Fonseka", *Sunday Leader*, 12 December 2010, available from www.thesundayleader.lk/2009/12/13/%E2%80%9Cgota-ordered-them-to-be-shot%E2%80%9D-%E2%80%93-general-sarath-fonseka/.

statement to the Committee had been based on the instructions received. Ekneligoda's wife faced hostile questioning from State counsel over her activities at the Human Rights Council side event held in March 2012, in Geneva.[41] The Government has reported that a magisterial inquiry is in progress. This case, together with many of this kind, will not fall within the mandate of the new Commission of Inquiry on Disappearances, which is mandated to examine cases of disappearances only in the northern and eastern provinces.

VI. Conclusions and recommendations

A. Conclusions

65. **Despite the significant progress achieved in the physical aspects of resettlement and recovery, and the implementation of some of the recommendations made by the Lessons Learnt and Reconciliation Commission, the Government of Sri Lanka has yet to satisfy the call made by the Human Rights Council for a credible and independent investigation into the allegations of serious human rights violations that persist or to take the necessary steps to fulfil its legal obligations to ensure justice and redress.**

66. **It is important for the Human Rights Council to recall the magnitude and gravity of the violations alleged to have been committed by the Government and the LTTE, which left many thousands of civilians killed, injured or missing. In its report, the Secretary-General's Panel of Experts concluded that, if proven, some of these acts would amount to war crimes and crimes against humanity. During her visit to Sri Lanka in August 2013, the High Commissioner was struck by the overwhelming sense of grief and trauma among victims and survivors that, if left unaddressed, will continue to undermine confidence in the State and reconciliation.**

67. **The Government has launched initiatives and established mechanisms, such as the military courts of inquiry and the Commission of Inquiry on Disappearances, but none of these have the independence to be effective or to inspire confidence among victims and witnesses. The military courts of inquiry lack independence and transparency and are limited in scope. Past commissions of inquiry have not always completed their mandate, their reports have not been published and their recommendations have not been implemented or followed by prosecutions. The Human Rights Commission of Sri Lanka, although handling many routine cases, has a poor record in responding credibly to serious violations committed by the military and security forces.**[42]

68. **For the past several years, Sri Lankan courts have been compromised by politicization and interference by the executive.**[43] **Cases or presiding magistrates and judges are often transferred from one court to other, thereby delaying judicial**

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[41] See A/HRC/21/18.

[42] For example, the attack on the Vavuniya prisoners and subsequent custodial deaths, in June 2012; the prison riot and subsequent custodial deaths in Welikada prison, in November 2012; and excessive use of force and subsequent deaths in Weliweriya, in August 2013.

[43] In her oral update to the Human Rights Council (A/HRC/24/CRP.3/Rev.1), the High Commissioner highlighted concerns about the degree to which the rule of law and independence of the judiciary had been undermined in Sri Lanka, notably by the 18th amendment and controversial impeachment of the 43rd Chief Justice in January 2013. The 18th amendment abolished the Constitutional Council, which once recommended appointments to the independent bodies, such as the Elections Commission, the Police Commission and the Human Rights Commission.

proceedings.[44] The High Commissioner heard from lawyers about large numbers of fundamental rights applications, including in cases of arbitrary detention and torture, that are discouraged or not given leave to proceed by the Supreme Court.[45]

69. One consequence of this situation is the understandable reluctance of victims and witnesses to come forward in the absence of any effective system for their protection. In many cases, witnesses have been intimidated to discourage their giving testimony, and even killed. This has been a major constraint on criminal investigations, as well as on the work of previous commissions of inquiry and the Lessons Learnt and Reconciliation Commission. The Attorney-General himself informed the High Commissioner that the reluctance of witnesses to come forward was the main reason for the lack of progress in such emblematic cases as the ones concerning Trincomalee and Action contre la Faim.

70. A bill on assistance and protection for victims of crime has been in preparation since 2007, and was tabled in Parliament in June 2008. The previous drafts contained many provisions that were not compliant with international human rights law. Although the Supreme Court recommended several amendments, it is not clear whether they were incorporated. According to the Government, the legislation is being finalized, even though the final version has yet to be released for public consultation.

71. At the same time, new evidence – including witness testimony, video and photographic material – continues to emerge on the events that took place in the final stages of the armed conflict. Human remains are also still being discovered, for instance in Matale, in November 2012, and Mannar, in December 2013.

72. As the emblematic cases highlighted above show, national mechanisms have consistently failed to establish the truth and achieve justice. The High Commissioner believes this can no longer be explained as a function of time or technical capacity, but that it is fundamentally a question of political will. The Secretary-General's Panel of Experts and the initiatives taken by international non-governmental organizations have shown that witnesses are willing to come forward to testify to international inquiry mechanisms that they trust and can guarantee their protection. For this reason, the High Commissioner remains convinced that an independent, international inquiry would play a positive role in eliciting new information and establishing the truth where domestic inquiry mechanisms have failed. In the absence of a credible national process, she believes the international community has a duty to take further steps, which will advance the right to truth for all in Sri Lanka and create further opportunities for justice, accountability and redress.

73. The High Commissioner reiterates her concern at the continuing trend of attacks on freedom of expression, peaceful assembly and association, particularly against human rights defenders, journalists and families of victims, the rising levels of religious intolerance, and continued militarization, which continue to undermine the environment where accountability and reconciliation can be achieved. She therefore reiterates and updates the recommendations made in her previous report to the Human Rights Council, most of which remain unimplemented.

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[44] As seen, for example, in the transfer of the magistrate overseeing the case of the Matale mass graves.

[45] For example, the Fundamental Rights application (SCFR115/2011) submitted by the parents of Ganeshan Nimalaruban, who died in custody following the attack on the prisoners in Vavuniya in June 2012.

B. Recommendations

74. **The High Commissioner recommends that the Human Rights Council establish an international inquiry mechanism to further investigate the alleged violations of international human rights and humanitarian law and monitor any domestic accountability processes. OHCHR stands ready to assist in such a process.**

75. **The High Commissioner recommends that the Government of Sri Lanka:**

(a) Finalize laws dealing with incitement to hatred, witness and victim protection, the right to information and the criminalization of enforced disappearances, and revise existing laws in accordance with international standards;

(b) Repeal the Prevention of Terrorism Act and lift the regulations promulgated under it that allow for arbitrary detention;

(c) Arrest, prosecute and punish perpetrators of attacks on minority communities, media and human rights defenders, and ensure protection of victims;

(d) Undertake independent and credible criminal and forensic investigations with international assistance into all alleged violations of human rights and humanitarian law, including recently discovered mass graves;

(e) Establish a truth-seeking mechanism and national reparations policy in accordance with international standards as an integral part of a more comprehensive and inclusive approach to transitional justice;

(f) Broaden the scope and tenure of the Commission of Inquiry on Disappearances to encompass cases from all parts of the island and all periods of the history of disappearances;

(g) Publish the final report of the military courts of inquiry, the presidential commission of inquiry of 2006 and the more recent commissions of inquiry to allow the evidence gathered to be evaluated;

(h) Take further steps in demilitarization, ensure military disengagement from activities that are meant to be civilian, resolve land disputes and promote meaningful community participation in reconstruction and development;

(i) Engage civil society and minority community representatives more fully in an inclusive and consultative process to support the implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission;

(j) Implement the Commission's recommendation for a national day of commemoration, allow all citizens their right to hold individual or group commemorations, and hold national consultations on the design of appropriate memorialization for the victims of the war;

(k) Give positive consideration to the offers of technical assistance made by the Office of the High Commissioner;

(l) Invite special procedures mandate holders with outstanding requests to visit the country in 2014, particularly the Working Group on Enforced or Involuntary Disappearances and the Independent Expert on minority issues.